

c.) Remarks:

Reconsideration of this application as amended is respectfully requested.

Method claims 7-12 have been canceled, but without prejudice to their inclusion in a continuing application.

Claims 1, 5, and 6 have been amended for clarity and to distinguish applicant's invention more clearly over the applied prior art. Claims 13-19 have been added. Of the claims now in the application it is submitted that claims 1, 3-6, and claims 13-19 are readable on the elected embodiment (Figures 1-7).

The rejection of claims 1, 3, and 4 on the judicially created doctrine of obviousness-type double patenting is respectfully traversed. Each of claims 1, 3, and 4 of the present application, as amended, requires the rows of indexing apertures to extend through the upper surfaces of selected thicker zones of the sheet. These claims also require the open tops of the cells to be substantially coplanar with the upper surface of each of the thicker zones through which the indexing apertures extend. Neither of these limitations is present in claim 1 of patent No. 6,651,384 and none of the secondary references includes any disclosure which makes either of these limitations obvious. Accordingly, claims 1, 3, and 4 of the present application cannot properly be rejected on the ground of double patenting.

The rejection of claim 1 as being anticipated by Nicholson also is respectfully traversed. Claim 1, as amended, specifically requires the indexing apertures to extend through the upper surfaces of selected thicker

zones of the sheet. The claim also specifically requires the open tops of the cells and the upper surface of each of the thicker zones through which the indexing apertures extend to be substantially coplanar. Even if it is considered that the upper edge of the side wall 18 of the Nicholson tray, as shown in Figure 2, constitutes a thicker zone of the sheet, such thicker zone does not include an indexing aperture in such thicker zone and extending through the upper surface thereof. Instead, the indexing aperture is in the side wall 18 at a level well below that of the upper surface or edge of the side wall.

In addition to the foregoing the recitation in claim 1 that the open tops of the cells are substantially coplanar with the upper surface of each of the thicker zones through which the indexing apertures extend is not disclosed or suggested by Nicholson. If, for the sake of argument, the upper end of Nicholson's wall 18 is considered to correspond to the thicker zone recited in claim 1, then clearly it does not accommodate an indexing aperture that is coplanar with the open tops of the cells.

A most significant advantage of applicant's construction over that disclosed by Nicholson is that, in applicant's construction, the provision of indexing apertures in zones having upper surfaces which are coplanar with one another and with the open tops of the cells makes it possible to provide two indexing wheels behind or beneath a tray. Each wheel can be of the same diameter and mounted on the same shaft, thereby assuring uniform speed of both wheels and the application of equal indexing forces on both sides of the tray, all without any synchronizing apparatus. In

contrast, Nicholson's indexing means constitute laterally movable pins or fingers which move in opposite directions into and out of the openings of the side walls, thereby requiring separate drive mechanisms and synchronization mechanisms. In applicant's construction the provision of indexing apertures in thicker zones and making the surfaces of such thicker zones coplanar with the open tops of the cells enables the location of the indexing apertures and the cells to be both laterally and longitudinally stable, thereby making it unlikely that the tray will flex outwardly during movement, thus enabling high speed indexing of the trays even though the trays may be formed of lightweight, somewhat flimsy material. It is respectfully submitted, therefore, that claim 1 is allowable.

Claim 5 was included with claim 1 as being anticipated by Nicholson. This rejection also is respectfully traversed. Claim 5 depends on claim 1 and distinguishes over the latter by specifying that the nursery tray has peripheral flanges at opposite sides and that indexing apertures are formed in a first section of one of the flanges and a second row of the indexing apertures are formed in a first section of another of the flanges. Each of the flanges is required to have a stiffening second section depending from the first section. Inasmuch as claim 5 depends on claim 1 it otherwise distinguishes over Nicholson for the same reasons given in support of claim 1. It should be borne in mind that the indexing apertures are required by claim 5 to be formed in the first section of each of the flanges and that the upper surfaces of the first section in which the apertures are formed must be coplanar with the open tops of the cells. This is another reason that

Nicholson cannot properly be said to anticipate claim 5. Claim 5, accordingly, also is respectfully submitted to be allowable.

Claims 3 and 4 were rejected over Nicholson in view of Kuben. Kuben was cited for its disclosure of stiffening ribs between cells and bridging material between cells. However, nothing in Kuben suggests the modification of Nicholson which would be required to provide a construction even approaching that recited in claim 1. Thus, even if the concept of stiffening ribs is borrowed from Kuben and applied to the construction of Nicholson, there still would be nothing in the resulting construction which would correspond to the coplanar relationship of the upper surfaces of the thicker zones and the open tops of the cells. Claims 3 and 4, accordingly, are believed to be allowable.

Claim 6 was rejected as being unpatentable over Nicholson in view of Bohlmann. The examiner acknowledges that Nicholson does not disclose vacuum formed cells in the thinner zone, but takes the view that Bohlmann discloses a vacuum formed cell that, if incorporated in Nicholson, would be the thinner zone. Clearly, Bohlmann does not disclose those characteristics referred to above which are not included or suggested by Nicholson. Claim 6, accordingly, also is believed to be allowable.

Claims 1, 3, 4, and 6 are considered to be generic to all disclosed embodiments of the nursery tray. Since these claims are believed to be allowable, those claims which do not read specifically on Figures 1-7, but do read on embodiments disclosed in other figures, are believed to be includable with the generic claims. Thus, it is believed claims 1-6 and 13-

19 are entitled to examination.

Newly submitted claims 13-15 depend, ultimately, on claim 1 and, accordingly, are considered to be allowable with the latter.

Claim 16 is an independent claim and distinguishes over the prior art for the same reasons given in support of claim 1. Claim 16 distinguishes over claim 1, inter alia, by reciting characteristics of the flange sections, one of which extends laterally and constitutes a thicker zone and another section which constitutes a stiffening section depending downwardly from the first flange section.

Claim 17 depends on claim 16 and recites the bridging material and stiffening ribs, thereby distinguishing over claim 16. Claim 18 depends on claim 17 and recites details of the stiffening ribs.

Claim 19 is an independent claim and distinguishes over the prior art for the same reasons given in support of claim 1. Claim 19 distinguishes over claim 1, inter alia, by specifying that the indexing apertures are formed in thicker zones of the tray, extend through the upper surface of the thicker zones and are parallel to the rows of open top cells. Claim 19 also requires each of the opposite flanges to have a first section constituted by a thicker zone and a stiffening second section depending from the first section. Since the upper surfaces of the thicker zones and the open tops of the cells are coplanar, it necessarily follows that the tops of the indexing apertures are coplanar with the open tops of the cells. Nothing in any reference even suggests such a construction. Claim 19, therefore, is respectfully submitted to be allowable.

SERIAL NO: 10/656,643

11

Care has been taken to ensure that no new matter is included in any of the claims.

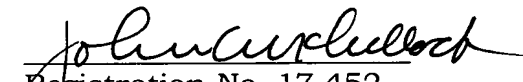
This application now is believed to be in condition for allowance. Further and favorable action is requested.

Enclosed is our check in the amount of \$210 for payment of a two month extension of time fee.

The Office is authorized to charge or refund any fee deficiency or excess to Deposit Account No. 50-2676.

Respectfully submitted,

Geoffrey Alan Williams,
By his attorney,


Registration No. 17,452
John K. McCulloch
5291 Colony Drive North
1st Floor
Saginaw, Michigan 48603
989-792-2500
989-792-2535 facsimile

CUSTOMER NO: 000042083